

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT
DISTRICT OF MASS.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION AT SPRINGFIELD

TERRI BARKER,	:	Complaint
JEFFREY DONAHUE	:	
Plaintiffs		:
v.		
		:
HARRY E. COHN & ASSOC. OF FL LLC	:	FILING FEE PAID:
d/b/a THE LAW CENTER	:	RECEIPT # <u>305834</u>
HARRY E. COHN,	:	AMOUNT \$ <u>150.00</u>
SCOTT M. MILLER,	:	BY DPTY CLK <u>WCH</u>
JOHN DOE a/k/a "MR. CORTEZ"	:	DATE <u>2/21/05</u>
Defendants		:
		Demand for Jury Trial

Jurisdiction

1. Jurisdiction of this Court attains pursuant to the Fair Debt Collection Practices Act ("FDCPA"), section 1692k(d), and the law of supplemental jurisdiction.

Parties

Terri Barker and Jeffrey Donahue

2. Terri Barker and Jeffrey Donahue reside in Chicopee in Hampden County, Massachusetts

3. Ms. Barker and Mr. Donahue are "consumers" as defined by FDCPA section 1692a(3).

Harry E. Cohn & Assoc. of FL LLC d/b/a The Law Center

4. Defendant Harry E. Cohn & Assoc. of FL LLC, doing business as The Law Center ("TLC"), is a Florida limited liability corporation with its principal place of business located in

Longwood, Florida.

5. Defendant TLC is in the business of debt collection.

6. Defendant TLC regularly collects or attempts to collect, directly or indirectly, consumer debts due and owing or allegedly due and owing to others.

7. Defendant TLC is a "debt collector" as defined by FDCPA section 1692a(6).

8. Defendant TLC is engaged in "trade" and "commerce" as defined by Massachusetts Consumer Protection Act, M.G.L. s. 93A:1(b) ("Chapter 93A").

9. Defendant TLC is not licensed with Massachusetts Division of Banks.

10. Defendant TLC is not registered with the Massachusetts Secretary of State.

11. Defendant TLC has not registered its trade name with the City of Chicopee.

12. At all times during their collection activities concerning Ms. Barker's alleged debts, Defendant TLC's employees were acting under the supervision and direction of Defendant TLC.

13. Defendant TLC is liable under the doctrine of *respondeat superior* for the collection activities of its employees.

Harry E. Cohn

14. Defendant Harry E. Cohn is an owner and operator of Defendant TLC.

15. Defendant Cohn is not licensed to practice law in Massachusetts.

16. Defendant Cohn is in the business of debt collection.

17. Defendant Cohn regularly collects or attempts to collect, directly or indirectly, consumer debts due and owing or allegedly due and owing to others.

18. Defendant Cohn is a "debt collector" as defined by FDCPA section 1692a(6).

19. Defendant Cohn is engaged in "trade" and "commerce" as defined by MCPA section 93A:1(b).

20. Defendant Cohn knew of, ratified, participated in, and approved of the acts and practices of Defendant TLC and its employees.

21. Defendant Cohn is directly liable for the collection acts and practices outlined below.

22. At all times during their collection activities concerning Ms. Barker's alleged debts, Defendant Cohn's employees were acting under the supervision and direction of Defendant Cohn.

23. Defendant Cohn is also indirectly liable under the doctrine of *respondeat superior* for the collection activities of his employees.

Scott M. Miller

24. Defendant Scott M. Miller is an owner and operator of Defendant TLC.

25. Defendant Miller is not licensed to practice law in Massachusetts.

26. Defendant Miller is in the business of debt collection.

27. Defendant Miller regularly collects or attempts to collect, directly or indirectly, consumer debts due and owing or allegedly due and owing to others.

28. Defendant Miller is a "debt collector" as defined by FDCPA section 1692a(6).

29. Defendant Miller is engaged in "trade" and "commerce" as defined by MCPA section 93A:1(b).

30. Defendant Miller knew of, ratified, participated in, and approved of the acts and practices of Defendant TLC and its employees.

31. Defendant Miller is directly liable for the collection acts and practices outlined below.

32. At all times during their collection activities concerning Ms. Barker's alleged debts, Defendant Miller's employees were acting under the supervision and direction of Defendant Miller.

33. Defendant Miller is also indirectly liable under the doctrine of *respondeat superior* for the collection activities of his employees.

John Doe a/k/a "Mr. Cortez"

34. Defendant John Doe, also known as "Mr. Cortez", is an employee of Defendants TLC, Cohn, and Miller.

35. Defendant Doe is in the business of debt collection.

36. Defendant Doe regularly collects or attempts to collect, directly or indirectly, consumer debts due and owing or allegedly due and owing to others.

37. Defendant Doe is a "debt collector" as defined by FDCPA section 1692a(6).

38. Defendant Doe is engaged in "trade" and "commerce" as defined by MCRA section 93A:1(b).

Facts and Allegations

39. Ms. Barker allegedly owes a debt to First American Holdings, which allegedly purchased the debt from First USA Bank.

40. This alleged debt was for personal, family, and household purposes.

41. The alleged debt was paid off in full in 2001.

42. On August 31, 2004, in an attempt to collect on the alleged debt, Defendants left a message on Ms. Barker's answering machine.

43. Defendants are not licensed with the Massachusetts Division of Banks as required by M.G.L. ch. 93 ss. 24-28 and 209 C.M.R. ss. 18.03-18.04, violating Chapter 93A:2.

44. Defendants' unlicensed pursuit of business in Massachusetts potentially carries criminal penalties. See M.G.L. ch. 93 s. 28.

45. Ms. Barker called Defendants back immediately and talked with Defendant Doe.

46. Defendant Doe identified himself as "Mr. Cortez".

47. Ms. Barker stated that she did not recognize or remember the alleged debt.

48. Defendants threatened to take Ms. Barker to court, costing her court fees and lawyer expenses.

49. The alleged owner of the alleged debt, First American Holdings, is not registered with the Massachusetts Secretary of State.

50. First American Holdings could not legally sue Ms. Barker.

51. Defendants could not legally sue Ms. Barker.

52. Defendants had no intention of suing Ms. Barker.

53. Defendants' misrepresentations concerning litigation violate FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

54. With Ms. Barker's permission, Mr. Donahue got on the phone.

55. After some discussion as to whether the bill was paid off in full in 2001, Defendant Cortez stated that he "calls people like you all the time."

56. When asked to clarify his statement, Defendants stated, "people who do not pay their bills... I've heard every excuse there is!"

57. Defendants closed the conversation by again threatening litigation.

58. Defendants' misrepresentations concerning litigation violate FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

59. Defendants' statements concerning "you people" and assertions that Mr. Donahue's dispute was an excuse to avoid payment are calculated to abuse, harass, and oppress, violating FDCPA section 1692d, 209 C.M.R. s. 18.15, and Chapter 93A.

60. Defendants left messages on Ms. Barker's answering machine on September 8 & 10.

61. On September 14, 2004, Defendants, by way of Defendant Doe, left this message on Ms. Barker's answering machine:

"It is imperative I speak to Terri Barker. I have been put back on this case, and I need to speak to you immediately. If I do not hear from you in seven days, I will proceed with court actions against you in the Hampden Courts. It is imperative you call me at 1-800-519-6058 extension 504, case number 91011. This message is being electronically taped."

62. Defendants' misrepresentations concerning litigation violate FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

63. Defendants' message, requiring a call back within seven days, gives a false sense of urgency, violating FDCPA section 1692e(10), 209 C.M.R. s. 18.16(10), and Chapter 93A:2.

64. Defendants' message, which was heard by Mr. Donahue, violates FDCPA section 1692c, 209 C.M.R. s. 18.14(2), Chapter 93A:2.

65. On September 21, 2004, Defendants, by way of Defendant Doe, left this message on Ms. Barker's answering machine:

"This concerns Terri Barker. Mrs. Barker this is Mr. Cortez with The Law Center, Harry Cohn and Associates. It is imperative that I hear back from you within forty eight hours pending a case in Hampden County clerk's office, case number 91011. My phone number is 1-800-519-6058, at extension 544."

66. Defendants' message misrepresents that there is "a case" pending against Ms. Barker, violating FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

67. Defendants' message, requiring a call back within forty eight hours, gives a false sense of urgency, violating FDCPA section 1692e(10), 209 C.M.R. s. 18.16(10), and Chapter 93A:2.

68. Defendants' message, which was heard by Mr. Donahue, violates FDCPA section 1692c, 209 C.M.R. s. 18.14(2), Chapter 93A:2.

69. On September 28, 2004, Defendants, by way of Defendant Doe, left this message on Ms. Barker's stepfather's answering machine:

"Ronald, sorry to bother you this afternoon. Trying to reach Debbie Barker, 95 Narragansett Boulevard. Please tell her to call back the attorney's office. Number 800-519-6058 extension 504, in reference to a complaint, complaint number 91011 that's been filed in Hampden County clerk's office. If you could, ah... give her... ask her to give me a call back or if you could call me back, that would be fine too. Ronald, appreciate the urgency of this matter. Thank you for helping me out. The number is 800-519-6058 extension 504, case number 91011. Thank you Ronald. Have a good day."

70. Defendants obviously had Ms. Barker's telephone number.

71. Since Defendants sent a letter to Ms. Barker on September 15 (attached), Defendants had Ms. Barker's address.

72. Defendants' communication violates FDCPA sections 1692b(2), 1692b(6), 1692c(b), 1692d & 1692f, 209 C.M.R. ss. 18.13(2), 18.13(6), 18.14(2), 18.15 & 18.16, and Chapter 93A:2.

73. Defendants' message misrepresents that there is "a case" pending against Ms. Barker, violating FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

74. On September 27, 2004, Ms. Barker sent letters to First American Holdings and Defendants disputing the alleged debt and requesting validation.

75. Defendants received the dispute letter on September 30.

76. True and accurate copies of the letter and the certified mail receipts are attached.

77. Defendants did not validate the alleged debt within five business days, violating 209 C.M.R. s. 18.18(3) and Chapter 93A:2.

78. On October 29, 2004, Defendants, by way of Defendant Doe, left this message on Ms. Barker's answering machine:

"Terri Barker, this is Mr. Cortez with the attorney's office, calling in regards to a, um... the letter you sent back to us about the charges. Can you please give me a call back at 800-519-6058 extension 504. This letter was not accurate [sic] of what you want, what you need. I'm not quite understanding; are you trying to dispute the debt or just the balance on it, because a lot of the balance on it is what interest is posted on the account. Give me a call back. I'll ask you to go over the details and give you what the settlement offer is from the attorney. I just want to negotiate a settlement with you to get this case resolved and closed. Give me a call back at 800-519-6058 extension 504. Refer to case number 91011. Have a good day."

79. According to caller-id, Defendants also called on November 19, 2004, but did not leave a message.

80. Defendants' continued attempts to collect after Ms. Barker's written dispute and request for validation violates FDCPA sections 1692g & 1692e(10), 209 C.M.R. s. 18.18, and Chapter 93A:2.

81. Defendants' message, which was heard by Mr. Donahue, violates FDCPA section 1692c, 209 C.M.R. s. 18.14(2), Chapter 93A:2.

82. As a consequence of Defendants' illegal collection

activities and communications, Ms. Barker and Mr. Donahue have suffered loss of self esteem and peace of mind, and have suffered emotional distress, humiliation and embarrassment.

Count I

FDCPA

83. The previous paragraphs are incorporated into this Count as if set forth in full.

84. The acts and omissions of Defendants constitute violations of the FDCPA.

85. Defendants' violations are frequent, persistent, and intentional.

86. Pursuant to the federal Declaratory Relief Act and FDCPA section 1692k, Plaintiffs are entitled to actual damages, to declaratory relief, and to a maximum of \$1000 statutory damages, as well as reasonable attorney's fees and costs.

Count II

Chapter 93A

87. The previous paragraphs are incorporated into this Count as if set forth in full.

88. The acts and omissions of Defendants constitute violations of the MCPA.

89. On December 30, 2004, Defendants were sent a demand letter pursuant to the requirements of Section 93A:9.

90. A true and accurate copy of the demand letter is attached.

91. Defendants have not responded to the demand letter.

92. Pursuant to Section 93A:9, Plaintiffs are entitled to actual damages, to declaratory relief, to an injunction prohibiting Defendants from the acts and practices that violate state and federal law, and treble damages, as well as reasonable attorney's fees and costs.

Count III

Negligent Infliction of Severe Emotional Distress

93. The previous paragraphs are incorporated into this Count as if set forth in full.

94. Defendants' actions constitute negligent infliction of severe emotional distress.

95. Plaintiffs are entitled to actual damages in an amount to be awarded within the reasonable discretion of a jury.

Count IV

Intentional Infliction of Severe Emotional Distress

96. The previous paragraphs are incorporated into this Count as if set forth in full.

97. Defendants' actions constitute intentional infliction of severe emotional distress.

98. Plaintiffs are entitled to actual damages in an amount to be awarded within the reasonable discretion of a jury.

Count V

Negligence

99. The previous paragraphs are incorporated into this Count as if set forth in full.

100. Defendants had duties imposed by statute and common law.

101. Defendants breached these duties, proximately and directly causing damage to Plaintiffs.

102. Plaintiffs are entitled to actual damages in an amount to be awarded within the reasonable discretion of a jury.

Count VI

Invasion of Privacy

103. The previous paragraphs are incorporated into this Count as if set forth in full.

104. Defendants' actions constitute common law invasion of privacy.

105. Plaintiffs are entitled to actual damages in an amount to be awarded within the reasonable discretion of a jury.

Prayer

WHEREFORE, Plaintiffs pray that the Court grants the following:

1. Actual damages.
2. Treble actual damages.
3. Statutory damages under state and federal law.
4. A declaration under state and federal law concerning the illegality of Defendants' acts and practices.
5. An injunction prohibiting Defendants from violating state and federal law.
6. Reasonable attorney's fees and costs.
7. Such other and further relief as the Court deems just and proper.

Respectfully submitted,


Jason David Fregeau,
Trial Attorney (565657)

47 Lincoln Road
Longmeadow, MA 01106
413/567-2461
413/567-2932 fax

Attorney for Plaintiffs


 4460 Corporation Lane, #306
 Virginia Beach VA 23462
 ADDRESS SERVICE REQUESTED

Main Office
 407 Wekiva Springs
 Suite 245
 Longwood, FL 32779



Harry E. Cohn & Asso. of FL, LLC, DBA

Harry E. Cohn *
 Scott M. Miller **
 Phone: (800) 519-6058
 Fax: (407) 714-0748

09/15/2004

91011 - AG10 - 008984

Terri Barker
 95 Narragansett Blvd
 Chicopee MA 01013-2122
 ######

Original Creditor: FIRST USA BANK
 Current Creditor: First American Holdings
 ID: 4417122718109896
 File #: 91011
 Balance: \$11,920.42

ID: 4417122718109896 Original Creditor: FIRST USA BANK
 File #: 91011 Current Creditor: First American Holdings

AMNYT0G149158 12030

Balance: \$11,920.42

Dear Terri Barker:

This is a demand for payment of the original debt incurred by you. The debt identified above was sold by FIRST USA BANK, all of your rights and obligations regarding this contract have been placed with this office.

Your past due contract is currently being reviewed. You may choose to resolve this matter with one of the following options: (1) You may pay the balance in full in the amount of \$11,920.42 with certified funds or (2) You may contact this office to make an acceptable payment arrangement.

You may contact this office toll free at 1-800-519-6058, Monday through Saturday 8:00am-9:00pm EST Please refer to the file number indicated above.

Federal law requires we notify you this in an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

If you would like to discuss the way your account has been serviced, you may contact our Compliance department toll free at (800) 519-6044.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days of receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such a judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of original creditor, if different from the current creditor.

Sincerely,


 The Law Center

* Licensed in Virginia

** Not a member of the FL Bar

** Licensed in Florida and Illinois

To: The Law Center (A FL Limited Liability Co.)
Main office
407 Wetiva Springs
Suite 245
Longwood FL 32779
Attention: Mr. Carter

Sent: September 31 2004
ID: 4411122718109896
File: 91011

I TERRI BARKER Dispute this claim from the current CREDITOR First AMERICAN Holdings for the balance of \$ 11,980.42 (eleven thousand nine hundred twenty dollars and 42 cents).

I would like in writing the validation of the debt, how you arrived at this amount, and to produce documentation with my signature on it from the original creditor.

This letter will also be sent to First American Holdings of Virginia Beach Virginia.

Thank you

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X <i>John</i></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) John C. Date of Delivery 9/30/04</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p>THE LAW CENTER MAIN OFFICE 407 WEKIWA SPRINGS SUITE 245 Longwood FL 32779</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7004 1160 0006 2287 6215</p>			

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at www.usps.com

DOMESTIC MAIL USE

Postage	\$ 0.37	UNIT ID: 0020
Certified Fee	2.30	Postmark Here Clerk: KJCGFG
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 4.42	09/27/04

Sent To
THE LAW CENTER MAIN OFFICE
 Street, Apt. No.,
 or PO Box No. **407 WEKIWA SPRINGS SUITE 245**
 City, State, ZIP+4 **Longwood FL 32779**

PS Form 3800, June 2002 See Reverse for Instructions

Jason David Fregeau

Attorney at Law

47 Lincoln Road

Longmeadow, MA 01106

Tel. 413-567-2461

Fax 413-567-2932

Also admitted in Ohio

December 30, 2004

By Certified U.S. Mail

Ari Brupbacher,
Registered Agent
Harry E. Cohn & Assoc. of FL LLC
d/b/a The Law Center
151 Sabal Palm Drive
Longwood, FL 32779

Re: Barker v. Harry E. Cohn & Assoc. of FL LLC, et al.

Dear Mr. Brupbacher:

I represent Terri Barker and Jeff Donahue for all their alleged debts. All communications in regard to Ms. Barker's and Mr. Donahue's debts -- current or future -- are to come to me. Defendants' communications with Ms. Barker and Mr. Donahue contain violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. ss. 1692a-1692o, the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, various sections of the Massachusetts Code of Regulations, and the common law.

On August 31, 2004, in an attempt to collect on an alleged debt, Defendants left a message on Ms. Barker's answering machine. Pursuant to M.G.L. ch. 93 ss. 24-28 and 209 C.M.R. ss. 18.03-18.04, Defendants are not licensed with the Massachusetts Division of Banks, violating Chapter 93A:2. Note that Defendants' unlicensed pursuit of business in Massachusetts potentially carries criminal penalties. See M.G.L. ch. 93 s. 28.

Ms. Barker called Defendants back immediately, stating that she did not recognize or remember the alleged debt. During the conversation, Defendants threatened to take Ms. Barker to court, costing her court fees and lawyer expenses. Defendants' misrepresentations concerning litigation violate FDCPA sections

Ari Brupbacher,
Registered Agent
December 30, 2004
page 2

1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss.
18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

With Ms. Barker's permission, Mr. Donahue got on the phone. After some discussion as to whether the bill was paid off in 2001, Defendant Cortez stated that he "calls people like you all the time." When asked to clarify his statement, Defendants stated, "people who do not pay their bills... I've heard every excuse there is!" Defendants closed the conversation by again threatening litigation. Defendants' misrepresentations concerning litigation violate FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2. Defendants' statements concerning "you people" and assertions that Mr. Donahue's dispute was a mere excuse to avoid payment are calculated to abuse, harass, and oppress, violating FDCPA section 1692d, 209 C.M.R. s. 18.15, and Chapter 93A.

On September 8, 2004, Defendants left messages on Ms. Barker's answering machine on September 8 & 10. On September 14, 2004, Defendants left this message on Ms. Barker's answering machine:

"It is imperative I speak to Terri Barker. I have been put back on this case, and I need to speak to you immediately. If I do not hear from you in seven days, I will proceed with court actions against you in the Hampden Courts. It is imperative you call me at 1-800-519-6058 extension 504, case number 91011. This message is being electronically taped."

Defendants' misrepresentations concerning litigation violate FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2. Defendants' message, requiring a call back within seven days, gives a false sense of urgency, violating FDCPA

Ari Bruppacher,
Registered Agent
December 30, 2004
page 3

section 1692e(10), 209 C.M.R. s. 18.16(10), and Chapter 93A:2. Defendants' message, which was heard by Mr. Donahue, violates FDCPA section 1692c, 209 C.M.R. s. 18.14(2), Chapter 93A:2.

On September 21, 2004, Defendants left this message on Ms. Barker's answering machine:

"This concerns Terri Barker. Mrs. Barker this is Mr. Cortez with The Law Center, Harry Cohn and Associates. It is imperative that I hear back from you within forty eight hours pending a case in Hampden County clerk's office, case number 91011. My phone number is 1-800-519-6058, at extension 544."

Defendants' message misrepresents that there is "a case" pending against Ms. Barker, violating FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2. Defendants' message, requiring a call back within forty eight hours, gives a false sense of urgency, violating FDCPA section 1692e(10), 209 C.M.R. s. 18.16(10), and Chapter 93A:2. Defendants' message, which was heard by Mr. Donahue, violates FDCPA section 1692c, 209 C.M.R. s. 18.14(2), Chapter 93A:2.

On September 28, 2004, Defendants left this message on Ms. Barker's stepfather's answering machine:

"Ronald, sorry to bother you this afternoon. Trying to reach Debbie Barker, 95 Narragansett Boulevard. Please tell her to call back the attorney's office. Number 800-519-6058 extension 504, in reference to a complaint, complaint number 91011 that's been filed in Hampden County clerk's office. If you could, ah... give her... ask her to give me a call back or if you could call me back, that would be fine too. Ronald, appreciate the urgency of this matter. Thank you for helping me out. The number is 800-519-6058

Ari Brupbacher,
Registered Agent
December 30, 2004
page 4

extension 504, case number 91011. Thank you Ronald. Have a good day."

Defendants' obviously had Ms. Barker's telephone number and, since Defendants sent a letter to Ms. Barker on September 15, Defendants had Ms. Barker's address. Defendants' communication violates FDCPA sections 1692b(2), 1692b(6), 1692c(b), 1692d & 1692f, 209 C.M.R. ss. 18.13(2), 18.13(6), 18.14(2), 18.15 & 18.16, and Chapter 93A:2. Defendants' message misrepresents that there is "a case" pending against Ms. Barker, violating FDCPA sections 1692d, 1692e(2), 1692e(5), 1692e(10) & 1692f, 209 C.M.R. ss. 18.15, 18.16(2), 18.16(5), 18.16(10) & 18.17, and Chapter 93A:2.

On September 27, 2004, Ms. Barker sent letters to Defendants disputing the alleged debt and requesting validation, which Defendants received on September 30. See attached Certified Mail Receipts; Certified Mail Return Receipts; Letters. Defendants did not validate the alleged debt within five business days, violating 209 C.M.R. s. 18.18(3) and Chapter 93A:2.

On October 29, 2004, Defendants left this message on Ms. Barker's answering machine:

"Terri Barker, this is Mr. Cortez with the attorney's office, calling in regards to a, um... the letter you sent back to us about the charges. Can you please give me a call back at 800-519-6058 extension 504. This letter was not accurate [sic] of what you want, what you need. I'm not quite understanding; are you trying to dispute the debt or just the balance on it, because a lot of the balance on it is what interest is posted on the account. Give me a call back. I'll ask you to go over the details and give you what the settlement offer is from the attorney. I just want to negotiate a settlement with you to get this case resolved

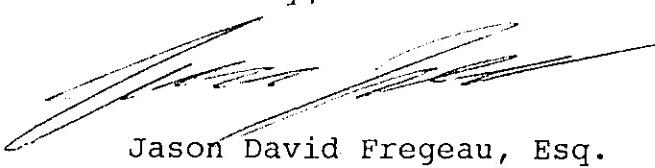
Ari Brupbacher,
Registered Agent
December 30, 2004
page 5

and closed. Give me a call back at 800-519-6058 extension 504. Refer to case number 91011. Have a good day."

According to caller-id, Defendants also called on November 19, 2004, but did not leave a message. Defendants' continued attempt to collect after Ms. Barker's written dispute and request for validation violates FDCPA sections 1692g & 1692e(10), 209 C.M.R. s. 18.18, and Chapter 93A:2. Defendants' message, which was heard by Mr. Donahue, violates FDCPA section 1692c, 209 C.M.R. s. 18.14(2), Chapter 93A:2.

Chapter 93A explicitly provides for equitable relief, a claim for which Mr. Donahue should be compensated. This letter is meant to give Defendants the opportunity to resolve this matter prior to litigation. Should Defendants desire a settlement, please have them remit to me as trustee \$50,000, plus \$500 for a confidentiality clause in the release (if desired), before January 29, 2005. Otherwise, I have been instructed to file suit against Defendants in federal district court in Springfield, Massachusetts, on that date.

Sincerely,



Jason David Fregeau, Esq.

cc: Terri Barker
Jeff Donahue
L. Jed Berliner, Esq.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery 1-4-05</p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p>Ari Brupbacher Registered Agent The Law Center 151 Sabal Palm Dr. Longwood FL 32779</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number <i>(Transfer from service label)</i></p> <p>7003 2260 0001 2106 9511</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Torri Barker
Jeffrey Donahue

DEFENDANTS

Harry E. Colar & Associates FL LLC
Harry E. Colar
Scott M. Miller
John Doe A/k/a "Mr. Contez"

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Hampshire
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Florida

(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jason David Fregeau Esq.
47 Lincoln Road
Longmeadow, MA 01106
413/567-2461

ATTORNEYS (IF KNOWN)

05 - 30033 - KPM

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

Violations of the Fair Debt Collection Practices Act, 15 U.S.C. ss. 1692-1692o during collection activities.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates / etc.	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Flegs	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 875 Customer Challeng : 12 USC 3410	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act	
REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWV (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 26 USC 7609		
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District

 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

2/1/05

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

Barker v. Harry E Colon & Assoc. et al FL LLC

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

05 - 30033 - KPM

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403)

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?

YES NO

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)).

YES NO

OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? -

(SEE LOCAL RULE 40.1(D)).

YES NO

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT?

(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? WesternYES NO

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Western

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION; YES NO OR WESTERN SECTION; YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jason David Fregeau Esq.ADDRESS 47 Lincoln RoadTELEPHONE NO. Longmeadow, MA 01106413/567-2461

(Catefirms rev - 3/97)